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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,732	02/07/2002	Alexander Gelbman	VTW-007RCE	2975

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LAHIVE & COCKFIELD  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER
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CHOW, DOON Y

ART UNIT	PAPER NUMBER
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2677

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/071,732	Applicant(s) GELBMAN, ALEXANDER	
	Examiner Dennis-Doon Chow	Art Unit 2677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 28-40, 42, 44, 45 and 48-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-40, 42, 44-45 and 48-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 34-39 and 50 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-151 of U.S. Patent No. 6924781. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim a similar invention.

3. Claims 34-39 and 51 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-105 of U.S. Patent No. 6753830. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim a similar invention.

### ***Claim Rejections - 35 USC § 103***

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. (6639578) in view of Giordano (5715622) and Malec et al. (4973952).

Regarding to claims 28-30 and 33, Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having a flexible antenna forming a flexible substrate (col. 7, lines 23-26; col. 14, lines 17-20; col. 15, lines 45-60); a remote activator module in electronic communication with the electronic label (Figs. 2 and 6); a processor for determining the information to be display by the display assembly; a storage element for storing instruction to executed by the processor; and a radio transducer.

Comiskey further discloses display label system is used in a store or a supermarket (col. 15, line 1). Comiskey differs from the claims in that Comiskey does not explicitly discloses receiving and sending information relate to items on a shelf.

Giordano, in the same display field, discloses mounting a display module on a shelf for displaying information relate to items on the shelf. The display module comprises an antenna for receiving and sending the information relate to the items on the shelf.

In light of the Giordano, it would have been obvious to one of ordinary skill in the art to use Comiskey's electronic display label to receive, send, and display information relate to items on a shelf. This would have been obvious because Giordano teaches using a remote control electronic display label for receiving, sending, and displaying information relate to items on a shelf is well known in the art.

The modified Comiskey does not explicitly disclose connecting the flexible antenna to the shelf.

Malec, in the same display filed, discloses connecting (mounting) an antenna to a shelf (col13, lines 34-36).

In light of Malec, it would have been obvious to one of ordinary skill in the art to connect (mount) the flexible antenna of the modified Comiskey to the shelf because Comiskey teaches the antenna can be any antenna structure known in the art (col. 14, lines 13-16).

Regarding to claims 31-32, Comiskey further disclose any other electromagnetic signals can be used (col. 4, lines 50-51). Therefore, a well known inductive power and capacitive coupling obviously can be used in Comiskey's system instead of the radio signal.

6. Claims 34-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. (6639578) in view of Giordano (5715622) .

Regarding to claims 28-30 and 33-39, Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having a bi-stable non-volatile imaging material; one or more power antennas

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(Col. 14, lines 10-34); a remote activator module in electronic communication with the electronic label (Figs. 2 and 6); a processor for determining the information to be display by the display assembly; a storage element for storing instruction to executed by the processor; a radio transducer; color display regions; and a power source including the power antennas, a battery, a thin film battery (col. 15, line 62), solar cell, and rechargeable storage means.

Comiskey further discloses display label system is used in a store or a supermarket (col. 15, line 1). Comiskey differs from the claims in that Comiskey does not explicitly discloses receiving and sending information relate to items on a shelf.

Giordano, in the same display field, discloses mounting a display module on a shelf for displaying information relate to items on the shelf. The display module comprises an antenna for receiving and sending the information relate to the items on the shelf. The antenna is mechanically connected to the shelf.

In light of the Giordano, it would have been obvious to one of ordinary skill in the art to use Comiskey's electronic display label to receive, send, and display information relate to items on a shelf. This would have been obvious because Giordano teaches using a remote control electronic display label for receiving, sending, and displaying information relate to items on a shelf is well known in the art.

7. Claims 40, 42 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. (6639578) in view of Hobson et al. (5445906).

Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having a bi-stable non-volatile imaging material; one or more power antennas (Col. 14, lines 10-34); a remote activator module in electronic communication with the electronic label (Figs. 2 and 6); a processor for determining the information to be display by the display assembly; a storage element for storing instruction to executed by the processor; a radio transducer; color display regions; and a power source including the power antennas, a battery, a thin film battery (col. 15, line 62), and solar cell.

Comiskey does not explicitly disclose the thin film battery is a rechargeable thin film battery.

Hobson discloses a conventional rechargeable thin film battery.

Since Comiskey further discloses the power source can be any conventional battery (col. 7, lines 53-53; col. 8, line 7), it would have been obvious to one ordinary skill in the art to use Hobson's rechargeable thin film battery in Comiskey's display label system.

8. Claims 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. in view of Sonoda et al. (5768217).

Regarding to claim 48, Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a display layer including electronic ink (832, Fig. 8E) disposed on a support; a flexible integrated circuit layer (col. 18, lines 56-58; col. 7, lines 23-27); a radio-frequency identification layer including

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a transceiver for receiving and generating output signal instructing the display layer to display the information (col. 14, lines 37-61); an antenna layer surrounding the display (col. 14, lines 1720); and the display layer, integrated circuit layer and the transceiver are stacked together (Fig. 8E).

Comiskey does not disclose the antenna is stacked together with the display layer.

Sonoda, in the same display field, discloses an antenna (20) and a display (11) are stacked together (Fig. 2).

In light of Sonoda, it would have been obvious to one of ordinary skill in the art to stack the antenna together with the display in Comiskey's display system because Comiskey teaches the antenna can be any structure known in the art (col. 14, lines 14-17).

Regarding to claim 49, Comiskey disclose the radio-frequency identification layer communicates with a controller regarding the deformation to be displayed (col. 14, lines 37-61).

9. Claims 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al..

Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having electronic ink including an arrangement of microcapsule electrophoretic display mediums (col. 2, lines 25-40); a receiver for receiving signals corresponding selected indicia to be display by he display

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assembly (col. 14, lines 35-37, col. 19, lines 50-57); a transmitter for transmitting signals from the electronic label (col. 19, lines 50-57); a processor for determining the information to be display by the display assembly (col. 14, lines 35-47); a storage element for storing instruction to executed by the processor (col. 14, lines 35-47); and a power source including the power antennas, a battery, a thin film battery (col. 15, line 62), solar cell, and rechargeable storage means; and a bi-stable, non-volatile imaging material allowing the display to remain visible and stable (col.2, lines 27-57).

Comiskey does not explicitly disclose an activation grid for activating the electronic ink. However, Comiskey discloses the display comprising a grid of electrodes (col16, lines 60-67). Since it is known in the art that the grid of electrodes activate the electronic ink when an electrical field is applied, it would have been obvious to one of ordinary skill in the art that Comiskey indirectly teach the activation grid.

10. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. and Sonoda et al..

The disclosures of Comiskey and Sonoda in clams 48 and 50 above apply here as well.

### ***Response to Arguments***

11. Applicant's arguments filed 12/2/05 have been fully considered but they are not persuasive.

Applicant argues that Comiskey discloses a display system that can receive information via radio signals, but cannot transmit radio signals. Examiner disagrees with

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applicant's arguments because Comiskey clearly teaches the display system can receive information via radio signals (col. 14, lines 35-48), and transmits radio signals (col. 19, lines 50-58).

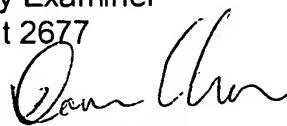
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis-Doon Chow whose telephone number is 571-272-7767. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sumati Lefkowitz can be reached on 571-272-3638. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Chow  
February 20, 2006

Dennis-Doon Chow  
Primary Examiner  
Art Unit 2677

  
**DENNIS-DOON CHOW**  
**PRIMARY EXAMINER**